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March 31, 2011

VIA FEDEX

William K. Suter, Clerk of the Court
Supreme Court of the United States
1 First Street, N.E.
Washington, D. C. 20543

Re: Proposed lodging in *United States v. Jicarilla Apache Nation*, No. 10-382

Dear Mr. Suter:

This letter replies to the letter of yesterday by the United States regarding the offer by *Amici* the Navajo Nation and the Pueblo of Laguna to lodge copies of certain materials in this case pursuant to Supreme Court Rule 32.3. The United States objects to the lodging of three documents that are public versions of disputed documents in this case.

The United States overlooks that it asserts in this case that “the documents required to be disclosed by the decisions below” evidence that “the government balances a host of statutory and other sovereign obligations[,]” and that this case expressly involves application of the attorney-client privilege to “communications between government officials and government attorneys implicating the administration of statutes pertaining to property held in trust for the tribe.” *E.g.*, U.S. Br. (I), 43. Given this, en camera inspection indeed would be valuable, as the trial court below recognized, and actually did. Pet. App. 26a & n.2.

In turn, the United States acknowledges that privilege “presumably has been waived” for a document that the United States filed as a trial exhibit in the Court of Claims in 1980 and which was obtained from the Washington National Records Center in Suitland, Maryland in February 2011. The United States also objects that *Amici* have not explained the details of how the remaining two documents were respectively obtained by a tribal auditor in Oklahoma in 1983 and apparently provided by the federal government to a tribe in New Mexico in the early 1990s. Given that the documents have been publicly available for approximately two and three decades, the details of how they were originally obtained is irrelevant. Also, because the documents are public, their lodging would not violate any protective order in this case.

For these reasons, *Amici* restate their offer to lodge materials if requested by the Clerk.

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Very truly yours,

NORDHAUS LAW FIRM, LLP

A handwritten signature in black ink, appearing to read 'D. Rey-Bear', followed by a horizontal line.

Daniel I.S.J. Rey-Bear

cc: Neal Kumar Katyal
Steven D. Gordon